

### **Remarks/Arguments**

Applicants have received and carefully reviewed the Office Action of the Examiner mailed March 31, 2009. Currently, claims 53-77 remain pending. Claims 53-77 have been rejected. Claims 72-77 were withdrawn by the Examiner as being drawn to a nonelected species. Claims 53, 63, and 68 have been amended to clarify relationships among the elements. New claims 78-80 have been added. No new matter has been added. Favorable consideration of the following remarks is respectfully requested.

### **Claim Rejections – 35 USC § 103**

Claims 53-58, 60-65, and 68-71 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gray et al. (WO 99/22763), hereinafter Gray, in view of Patel (U.S. Patent No. 4,832,028). After careful review, Applicant must respectfully traverse this rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP § 2143.03). Nowhere does Gray appear to disclose a “a perfusion lumen configured for the passage of perfusing fluid supplied at the proximal end region therethrough so as to flush embolic debris into the filter”. Furthermore, nowhere does Patel appear to remedy the shortcomings of Gray.

Gray has been acknowledged by the Examiner to not disclose a first or outer catheter shaft, thus Gray cannot be said to disclose a first catheter shaft lumen and thus cannot be said to disclose a first catheter shaft, including therein a slideable second catheter shaft, said first catheter shaft configured for the passage of perfusing fluid therethrough. The Examiner has asserted that Patel discloses a guiding catheter with a balloon which may be used with a dilating catheter. The guiding catheter (11) of Patel has been identified as corresponding to the first, or outer, catheter shaft of independent claims 53 and 68. Catheter (11) of Patel appears to have a distal region bypass side hole (27) which allows blood to flow from the aorta through the distal end of the catheter (11). (Figs. 1 and 2; col. 2, lines 20-23.) Thus the catheter (11) of Patel appears to be

incapable of stopping “fluid outside of the first catheter shaft proximal to the balloon from flowing distally past the distal region of the shaft when the balloon is inflated” as found in claims 53 and 68.

Further, the catheter (11) of Patel does not appear to be configured for the passage of perfusing fluid supplied at a proximal end region, with or without configuration for the additional function of flushing embolic debris into the filter. Patel appears to mention fluid flow only in the context of inflation of a balloon and to mention blood flow only in the context of bypassing the guide catheter balloon (25) within the distal region of the catheter (11). Additionally, any blood diverted from the outside of the catheter (11) does not appear to be directed toward flushing embolic debris into a filter as the words “filter”, “embolic”, “embolism”, “debris”, and the like were not found in Patel. As may be seen in Fig. 2 of Patel, blood flowing into the side hole (27) would appear to be prevented from flowing past the stenotic lesion (31) and dilator balloon (33) to a region where a filter might be located and instead appears to divert through the lower vessel.

Therefore, Gray in view of Patel does not appear to teach all the claim limitations, as is required to establish a *prima facie* case of obviousness and Applicant respectfully requests that the rejections of nonobvious independent claims 53 and 68 be withdrawn.

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP 2143.03) For at least this reason, claims 54-58, 60-65, 69-71, and new claims 78-80, which depend from nonobvious independent claims 53 and 68 respectively, are also believed to be nonobvious and Applicant respectfully requests that the rejections be withdrawn.

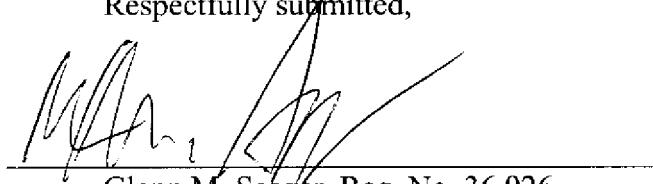
Claims 59, 66, and 67 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gray in view of Patel as applied to claims 53 and 56 and in further view of Dubrul (U.S. Patent No. 6,258,115). After careful review, Applicant must respectfully traverse this rejection.

As discussed above, independent claim 53 is believed to be nonobvious over Gray in view of Patel. Dubrul, asserted to teach self-expanding stents, and a stent system with aspiration, does not appear to overcome the deficiencies of Gray and Patel as applied to nonobvious independent claim 53. Accordingly, claims 59, 66, and 67, which depend from nonobvious independent claim 53, are believed to be nonobvious as well and Applicant respectfully requests that the rejections be withdrawn.

In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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